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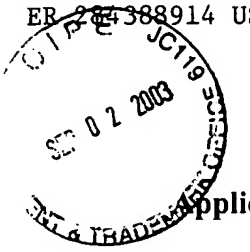

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

13/Appeal Brief
J. Stephen
9-12-03

Applicant:	Barbara J. Bolle	September 2, 2003
Appln./Contr. No.:	10/014,838	**Art Unit (TC):** 2859
Filed:	10/26/2001	**Examiner:** Christopher W. Fulton
For:	EXTERNAL GAUGE FOR LIQUOR INVENTORY CONTROL	

Mail Stop: Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT'S BRIEF ON APPEAL

Applicant, Barbara J. Bolle, appeals as follows:

(1) **REAL PARTY IN INTEREST.** The real party in interest is the applicant, Barbara J. Bolle.

(2) **RELEATED APPEALS AND INTERFERENCES.** None.

(3) **STATUS OF CLAIMS.** Claims 1-8 are pending. Claims 1-8 are appealed.

(4) **STATUS OF AMENDMENTS.** No amendments to claims filed after final rejection.

(5) **SUMMARY OF INVENTION.** Briefly, the invention comprises two-dimensional template-shaped gauges to quickly determine the amount of liquor poured from a corresponding bottle. Since each style of gauge fits a complementary bottle shape, the

ounce, shot or metric scale of the vertical markings on the gauge can be spaced to reflect the changes in bottle interior cross-section. Thus, a bartender or server can quickly select the gauge corresponding to a particular liquor bottle, place both the bottle and the gauge bottom on a countertop with the gauge scale against the bottle and, literally at a glance, determine the amount remaining in the bottle or the amount poured. The result is a more accurate pour and better control over the sales of expensive liquor and similar beverages.

The applicant has been a bartender for many years in upscale restaurants. She developed the new gauge in response to her experience with the need to carefully control the serving of relatively expensive beverages that are mixed and prepared on demand.

The gauges have become a commercial success in the form of a set of several gauges loosely pinned together at the top. With five double-edged gauges, 10 different liquor bottle shapes can be accommodated with the set of gauges.

(6) ISSUES. The first issue is whether claims 1, 4, 5 and 8 are unpatentable under 35 U.S.C. 103(a) over U.S. Patent No. 765,611 to Carr in view of U.S. Patent No. 1,515,398 to Marcussen.

The second issue is whether claims 2 and 6 are unpatentable under 35 U.S.C. 103(a) over Carr in view of Marcussen above and further in view of U.S. Patent No. 1,235,801 to Hornig.

The third issue is whether claims 3 and 7 are unpatentable under 35 U.S.C. 103(a) over Carr in view of Marcussen above and further in view of U.S. Patent No. 1,589,651 to McDermott.

The patentability of claims 2, 3 and 4 depend upon the patentability of claim 1, which they incorporate by reference, and the patentability of claims 6, 7 and 8 depend upon the patentability of claim 5, which they incorporate by reference.

More specifically, does Carr, in view of Marcussen, make obvious a gauge that both follows the contour (shape in two dimensions) of a bottle and uses the plane of the bottle exterior bottom as a measuring reference location, the scale on the gauge measuring the interior of the bottle contents from the interior bottom of the bottle (independent claims 1 and 5)?

(7) GROUPING OF CLAIMS. Independent claims 1 and 5 comprise the first issue above with claims 2, 3 and 4 dependent on claim 1, as is their patentability, and claims 6, 7 and 8 dependent on claim 5, as is their patentability.

(8) ARGUMENT.

Claims 1 and 5 and their rejection as unpatentable (35 U.S.C. 103(a)) over Carr in view of Marcussen.

Carr discloses a stand or platform for a bottle with a strap (5) that extends under the platform and bottle and with ends (6) and (7) that extend upwardly on opposite sides of the bottle. Scales are on each upward portion of the strap and provide measurement from the inside bottom of the bottle.

The gauge and scale of Marcussen provide a top-down measurement of bottle volume to determine the amount of cream at the top of a bottle of milk (before the modern age of homogenized milk). The Marcussen gauge is contoured to be complementary to the top of the milk bottle and only extends downwardly enough to measure just beyond the maximum amount of cream to be expected.

In the final examiner's action, the examiner contends that it would be obvious to make a hand-held gauge that can be placed along the side of the bottle for a quick and accurate measurement. The examiner further contends that since the Carr scale starts with the inside bottom of the bottle, this would necessitate a gauge starting at the bottom outside of the bottle. But neither Carr nor Marcussen shows a gauge starting at the outside bottom of a bottle and, more importantly, Marcussen teaches a gauge and scale starting at the top of a bottle. The combination of Carr and Marcussen teaches a gauge and scale that measure from the top of a bottle down to the inside bottom of the bottle. Thus, Carr in view of Marcussen does not necessitate a scale that takes into account the bottom thickness of the bottle.

Independent claim 1 specifies "at least one edge extending from the outside bottom of the corresponding bottle." Independent claim 5 specifies "the gauge bottom lying in a plane coincident with the plane of the outside of the bottle bottom." Applicant's independent claims require that the gauge terminate at the outside bottom of the bottle. This is because the bottom of the gauge rests on a countertop when a bartender measures the liquor in the corresponding bottle. Thus, the combination of Carr and Marcussen does not teach or suggest the limitations in claims 1 and 5 set forth above, nor are these limitations necessitated or inherent in the combination of Carr and Marcussen.

Claims 2 and 6 and their rejection as unpatentable (35 U.S.C. 103(a)) over Carr in view of Marcussen and further in view of Hornig.

Hornig discloses a pair of straight scales on opposite edges of a single gauge. Claims 2 and 6 of applicant incorporate claims 1 and 5 by reference, respectively. While Hornig discloses scales on opposite edges, Hornig does not disclose or suggest that the two

opposite edges be both contoured and dissimilar, as called for in claims 2 and 6. Liquor bottles vary greatly in their external shapes and sizes. There is nothing standard about liquor bottle shapes, despite the examiner's reference to a "second standard bottle" in paragraph 4 of the examiner's final action. Applicant contends that with the widely varying shapes of liquor bottles, it is not obvious that widely varying contours and scales can be put on opposite edges of a single gauge.

Claims 3 and 7 and their rejection as unpatentable (35 U.S.C. 103(a)) over Carr in view of Marcussen and further in view of McDermott.

McDermott discloses a display area at the top of a measuring device; therefore, patentability of claims 3 and 7 depends upon patentability of claims 1 and 5 incorporated by reference.

Respectfully submitted,

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APPENDIX I
CLAIMS

1. A gauge having at least two edges, a top and a bottom, at least one of the edges shaped to engage and match the corresponding external surface of a bottle in a direction parallel to the bottle axis, said at least one edge extending from the outside bottom of the corresponding bottle,

a scale extending along the shaped edge, said scale having spacing changing as a function of the change in cross-sectional area of the bottle interior in the direction of the bottle axis, and said scale beginning or ending measurement with the bottom of the bottle interior.

2. The gauge of claim 1 wherein two edges are shaped to engage and match the external surfaces of bottles parallel to the bottle axes, the two edges being of dissimilar shape.

3. The gauge of claim 1, including at least one display area at the top of the gauge.

4. A plurality of gauges according to claim 1 wherein the gauges differ from one another by the edge shapes that match a plurality of complementary bottles.

5. A gauge having at least two edges, a top and a bottom, at least one of the edges shaped to engage and match the corresponding external surface of a bottle in a direction parallel to the bottle axis, said gauge bottom lying in a plane coincident with the plane of the outside of the bottle bottom,

a scale extending along the shaped edge, said scale having spacing changing as a function of the change in cross-sectional area of the bottle interior in the direction of the bottle axis, and said scale beginning or ending measurement with the bottom of the bottle interior.

6. The gauge of claim 5 wherein two edges are shaped to engage and match the external surfaces of bottles parallel to the bottle axes, the two edges being of dissimilar shape.

7. The gauge of claim 5, including at least one display area at the top of the gauge.

8. A plurality of gauges according to claim 5 wherein the gauges differ from one another by the edge shapes that match a plurality of complementary bottles.

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